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Lawsuit Threatens To Close Facebook

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Mark Zuckerberg '06-'07 planned to spend his semester away from the College focusing on improvements to his popular networking site, thefacebook.com, while readying his next endeavor, Wirehog, for its long-awaited release. But any dreams of a stress-free semester were dashed on Sept. 2, when the founders of competitor ConnectU.com filed a lawsuit against his site and its five officers.

The suit asks the court to shut down the site and force Zuckerberg and thefacebook.com to turn over the profits resulting from his alleged breach of contract.

According to the complaint in the United States District Court for the District of Massachusetts, ConnectU LLC, formed by Divya K. Narendra '04, Cameron S. H. Winklevoss '04 and Tyler O. H. Winklevoss '04, is seeking damages for Zuckerberg's alleged theft of their idea--then called Harvard Connection--and his subsequent deception.

"This is a civil action for breach of contract, misappropriation of trade secrets, breach of fiduciary duty, unjust enrichment, intentional interference with prospective business advantage, breach of duty of good faith and fair dealing, and fraud arising out of Defendant's... unauthorized use of Plaintiff's source code and confidential business plans, and usurpation of business opportunity," said the papers filed on behalf of ConnectU LLC, which estimate the as-yet-uncalculated damages incurred by Narendra and the Winklevosses to exceed \$75,000.

The lawsuit further alleges that Zuckerberg exploited his access to the business model employed by ConnectU source code.

The trio of Pforzheimer House alums made similar claims in May when their site debuted with lackluster results in a market saturated by Zuckerberg's product, citing several promises conveyed by him to finish the work expected of him on their site.

Those claims were modified slightly in ConnectU LLC's lawsuit, however, arguing that "Zuckerberg's pledges of commitment to Plaintiff, his acceptance of the Harvard Connection Code, his access to and acceptance of ConnectU's proprietary and confidential business management information and procedures, his understanding that he would be compensated when the website was successful, and his ability to highlight his work on the site to potential employers created a contract, a duty of good faith and fair dealing, and a fiduciary relationship between Defendant Zuckerberg and ConnectU."

Though the two sides' respective views of their affiliation did not match up in May, neither camp went so far as to label the partnership contractually binding.

Zuckerberg, for his part, viewed his participation in ConnectU's development as "informal," contributing less than a day's work, then quitting when the project yielded few appreciable results.

ConnectU, under the impression that Zuckerberg was "part of the team," admitted that, though there were benefits to be derived from his participation, his was not a paid position.

"He'd become a partner if we'd enter into a corporate agreement and he'd be able to reap any benefits from the site," Cameron Winklevoss said in May. "It wasn't as if we told him to build this site and then would have said good-bye, get out....He never asked for compensation, but we would have been happy to pay for his services."

Because neither Narendra nor the Winklevosses are fluent in the requisite programming language, ConnectU had hired salaried employees prior to Zuckerberg's involvement.

After exhausting all means of remediation available to them at Harvard, including a petition for a hearing with the College's Administrative Board and a personal audience with President Lawrence H. Summers, the ConnectU team ruled out a lawsuit in a May interview, citing the financial burden such action would necessarily impose. But after more than three months—and a rate of expansion demonstrably slower to that of Zuckerberg's site—Narendra and the Winklevosses retained the counsel of Finnegan, Henderson, Farabow, Garrett and Dunner, L.L.P. for ConnectU LLC. The firm is a national leader in the practice of intellectual property law, according to Christopher R. Hughes '06, spokesperson for thefacebook.com and one of five named defendants.

Hughes said that though thefacebook.com retains a lawyer as standard practice, the nature of ConnectU's claims has forced the site and its administrators to hire a similarly specialized firm—an expense Zuckerberg anticipates will cost the site \$100,000, Hughes said.

"I think one also has to realize lawsuits cost quite a lot of money and this is...not going to be a small price," Hughes said. "I think that might be part of [ConnectU's] strategy."

"As an organization, we're not posting a profit," Hughes added, dismissing the suit's estimates of thefacebook.com's value. He said it was a common misconception that the facebook.com has so much money that it can easily absorb the costs of the legal process and any possible fines. "We're breaking even, and we're satisfied with that so far."

Narendra, the Winklevosses and Zuckerberg could not be reached for comment.

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